

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

KENNETH M. LEMONS,

Plaintiff-Appellant.

v.

US AIR GROUP, INCORPORATED; JOHN  
ELROD, individually and in his official  
capacity as Reservations Manager;  
LONNIE HARRIGAL, individually and in  
her official capacity as Assistant  
Manager; RENA HAMRICK, individually  
and in her official capacity as  
Production Control Manager; DONNA  
BECK, individually and in her official  
capacity as Supervisor; JUDI BRYDGES,  
individually and in her official  
capacity as a Team Assistant; MARTY

No. 99-1241

HAVENS, individually and in her  
official capacity as a Team Assistant;  
L. R. WELCH, JR., individually and in  
his official capacity as Manager of  
Employee Relations; JOYCE GREENE,  
individually and in her official  
capacity as Personnel Representative;  
DARRYL WILES, individually and in his  
official capacity as Reservations  
Agent; TODD HAYWOOD, individually  
and in his official capacity as  
Reservations Agent; JIMMY SPEAS,  
individually and in his official  
capacity as Supervisor,  
Defendants-Appellees.

Appeal from the United States District Court  
for the Middle District of North Carolina, at Greensboro.  
James A. Beaty, Jr., District Judge.  
(CA-97-97-6)

Submitted: June 29, 1999

Decided: September 17, 1999

Before NIEMEYER and MICHAEL, Circuit Judges,  
and BUTZNER, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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#### **COUNSEL**

Kenneth M. Lemons, Appellant Pro Se. Louis Whittier Doherty, KIL-  
PATRICK STOCKTON, L.L.P., Winston-Salem, North Carolina,  
Valerie Granfield Roush, Tom A. Jerman, O'MELVENY & MYERS,  
L.L.P., Washington, D.C., for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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#### **OPINION**

##### **PER CURIAM:**

Kenneth Lemons appeals the district court's order dismissing his  
claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C.  
§§ 12111 - 12117 (1994). Lemons' employment with US Air was ter-  
minated in 1994, and following pursuit of his administrative reme-

dies, he filed suit in the district court alleging discrimination on the basis of disability. US Air moved to dismiss, claiming that Lemons was judicially estopped from bringing a claim under the ADA because of his application for, and receipt of, disability benefits from the Social Security Administration. The district court granted the motion citing McNemar v. Disney Store, Inc., 91 F.3d 610 (3d Cir. 1996). McNemar's reasoning has since been overruled by the Supreme Court's decision in Cleveland v. Policy Management Sys. Corp., \_\_\_ U.S. \_\_\_, 1999 WL 320795 (U.S. May 24, 1999). Accordingly, we vacate the order of the district court and remand for further proceedings consistent with Cleveland.

VACATED AND REMANDED